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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Rwanda

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly and to the members of the Security Council the reports prepared by Mr. René Degni-Ségui, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Rwanda (see annexes I and II), in accordance with paragraph 20 of Commission on Human Rights resolution S-3/1 of 25 May 1994 and Economic and Social Council decision 1994/223 of 6 June 1994.

ANNEX I

Report on the situation of human rights in Rwanda prepared by the Special Rapporteur of the Commission on Human Rights in accordance with Commission resolution S-3/1 and Economic and Social Council decision 1994/223

INTRODUCTION

1. At its third special session, the Commission on Human Rights adopted resolution S-3/1, dated 25 May 1994, by which it requested its Chairman to appoint a special rapporteur to investigate at first hand the human rights situation in Rwanda and to receive relevant, credible information on the human rights situation there from Governments, individuals and intergovernmental and non-governmental organizations, and to avail himself of the assistance of existing mechanisms of the Commission on Human Rights.

2. The Commission requested the Special Rapporteur to visit Rwanda forthwith and to report on an urgent basis to the members of the Commission, no later than four weeks from the adoption of the resolution. In accordance with that provision, the Special Rapporteur visited Rwanda and some neighbouring States from 9 to 20 June 1994. During that mission, he was accompanied by Mr. Bacre Waly Ndiaye, Special Rapporteur on extrajudicial, summary or arbitrary executions, and Mr. Nigel Rodley, Special Rapporteur on matters relevant to torture, who accepted his invitation and placed at his disposal their experience and expertise.

3. The Special Rapporteur would also like to thank the Rwandese "interim Government" and the Rwandese Patriotic Front (FPR) for their cooperation.

4. He also wishes to thank all those who supported him in the preparation and realization of his mission. He is particularly grateful to the United Nations Rwanda Emergency Office (UNREO), the United Nations Development Programme (UNDP), the United Nations High Commissioner for Refugees (UNHCR) and the International Committee of the Red Cross (ICRC) for the logistic assistance they gave him. He also wishes to express his deep gratitude to the Force Commander of the United Nations Assistance Mission to Rwanda (UNAMIR) and his officers for their support and generous cooperation, in difficult circumstances, during his stay in Rwanda. Lastly, the Special Rapporteur thanks all those who sent him information on the situation of human rights in Rwanda, particularly the non-governmental organizations, and invites them to continue such cooperation in the future.

5. It should be mentioned that the Special Rapporteur's mission was a follow-up to that of the High Commissioner for Human Rights on 11-12 May 1994 (E/CN.4/1994/S-3/3) and, to a certain extent, to that of the Special Rapporteur on extrajudicial, summary and arbitrary executions, Mr. Bacre Waly Ndiaye, in April 1993 (E/CN.4/1994/7/Add.1).

6. This report, which is based upon information, testimony and documents received from various sources, cannot claim to be exhaustive, the time factor prohibiting this. It is simply a modest attempt to paint an overall picture of the human rights situation in Rwanda, a general view which will make it possible to guide future inquiries. This general view, designed to enlighten the Commission while meeting some of its concerns, relates to the preliminary measures adopted by the Special Rapporteur and to the reported events and resultant violations of human rights and, lastly, contains a series of recommendations.

I. PRELIMINARY MEASURES

7. Before going into the field to carry out a preliminary investigation and report to the members of the Commission on the situation of human rights in Rwanda, the Special Rapporteur discussed with his team the mandate he had received and the methods to be used in carrying it out.

A. Mandate

8. The mandate entrusted to the Special Rapporteur contains two elements:

(a) To report to the Commission on Human Rights on the situation of human rights in Rwanda, including the root causes and responsibilities (a "horizontal" inquiry);

(b) To make available to the Secretary-General systematically compiled information on possible violations of human rights and of international humanitarian law.

The Commission has affirmed that all persons who committed or authorized such violations are individually responsible for them and that the international community would exert every effort to bring them to justice (a "vertical" inquiry).

9. These obligations to investigate and report are complementary and should be carried out within the framework of the same structure, in two stages which are interdependent and overlapping. The collection of information for the report to the Commission on Human Rights (and to other United Nations organs, as requested by resolution S-3/1) and the drafting of recommendations for concrete and immediate action to save lives, must be given priority.

10. In practice, the two stages are complementary in that the sources of the information are the same. Likewise, information collected for one aspect of the mandate clarifies the other. For example, an investigation of the structure of the armed forces of the two parties to the conflict is needed to formulate recommendations for ending the massacres while, at the same time, it will supply the basis for determining individual responsibilities, in the light of the chain of command. "Horizontal" investigations of the first stage will give a general picture of the information available and the most effective way of obtaining it, both of which are essential before beginning the in-depth investigation, in the second stage, of certain specific cases. The first stage will also make it possible to identify priorities in terms of investigations (e.g. an analysis of the broadcasts of the radio stations close to the Government and their link with the massacres of Tutsi and moderate Hutu, with a view to establishing individual responsibility and identifying particular massacres which could be examined in greater detail).

11. In order to ensure that the two stages are complementary, the information must be collected, recorded and analysed in a way such that it will be usable in the event of a trial by a national or, if appropriate, international court.

12. The way in which the two stages can be put into effect is influenced by the events in the field and, above all, by the need to ensure the safety of

the investigators in a situation of armed conflict. In view of the dangers incurred, particularly by the victims and witnesses, both in Rwanda and in the countries in which they have taken refuge, the collection of information should begin with the numerous international organizations and agencies active in the area, together with journalists, members of the clergy, etc., in Rwanda, in other countries of the region or in Europe. The vast majority of these have already shown great willingness to supply any useful information to the Special Rapporteur.

13. This in-depth investigation will be carried out by a team of human rights specialists, dispatched to the field by the High Commissioner for Human Rights, in accordance with resolution S-3/1 of the Commission on Human Rights. During his first visit to the region, the Special Rapporteur also endeavoured to prepare for the work of this team, the first two members of which are already in place.

B. Consultations and field visits

14. Following his appointment on 25 May 1994, the Special Rapporteur went to Geneva and Brussels - pending completion of the logistic and administrative preparations for his mission to Rwanda - for consultations with the Centre for Human Rights, representatives of States, and members of non-governmental organizations working for the defence of human rights.

15. Between 6 and 9 June 1994, he met representatives of the Governments of Rwanda, Burundi, Zaire, Canada, Cameroon, Nigeria, France and Belgium and of a large number of human rights organizations, who commented upon and gave him information concerning the situation of human rights in Rwanda. Having learned, during his stay in Geneva, of the murder of the Archbishop of Kigali, the Bishop of Kabgayi and 10 priests by the FPR and - probably as a reprisal - of the execution by the Rwandese Armed Forces (FAR) of 63 other persons, the Special Rapporteur sent letters on 9 June 1994 to both the FPR and the "interim Government" to condemn those actions, to ask that everything possible be done to prevent any recurrence of such incidents and to demand that the perpetrators of those crimes be prosecuted, with full defence guarantees. A letter was also sent to the Government of France requesting that the black box of the presidential aircraft be made available to the Special Rapporteur. The Government of France replied, on 17 June 1994, that it was not in possession of the black box and that the request should be addressed to the "interim Government". The same request having been addressed to the Rwandese General Staff, it replied that it knew nothing about it.

16. Between 9 and 15 June 1994, the Special Rapporteur met in Brussels, Nairobi, Bujumbura and the South Kivu area of Zaire, the Special Representatives of the Secretary-General for Rwanda and Burundi, the Force Commander of the United Nations Assistance Mission to Rwanda (UNAMIR), the UNREO Coordinator and several members of his staff, the UNHCR Special Envoy and several members of his staff, many representatives of the United Nations agencies, institutions and programmes currently active in Rwanda, representatives of the ICRC and of international non-governmental organizations supplying humanitarian assistance and of human rights

organizations, as well as a large number of individuals, both Rwandese and nationals of other countries, who supplied evidence on violations of human rights in Rwanda.

17. From 16 to 20 June, the Special Rapporteur visited Rwanda, where he met the UNAMIR Force Commander and several other officers, the Chief of Staff of the Rwandese Armed Forces, the Prefect of the City of Kigali and two members of the staff of the gendarmerie, as well as representatives of the FPR. During his stay in Rwanda, the Special Rapporteur visited several places sheltering persons displaced by the conflict, as well as the Amahoro Stadium, the King Fayçal Hospital and Kigali Airport. He also visited the ICRC Hospital in Kigali. These various visits have made it possible for him to try to reconstitute the events.

II. THE REPORTED EVENTS

18. The attack on the aircraft on 6 April 1994 which cost the lives of Juvénal Habyarimana, President of the Rwandese Republic, Cyprien Ntyamira, President of the Republic of Burundi, several persons in their entourage and the crew, seems to have been the immediate cause of the grievous and tragic events which Rwanda is currently undergoing. That is probably why the Commission on Human Rights has requested the Special Rapporteur to "receive relevant, credible information on the human rights situation" in Rwanda "including on root causes and responsibilities for the recent atrocities". These atrocities consist mainly of massacres and other deeds related to them.

A. The massacres

19. At the moment when the presidential aircraft crashed to earth, the internal situation in Rwanda was tense and explosive for a number of reasons: frustration at the delays in implementing the Arusha Peace Agreement of 4 August 1993, the reign of terror by the militias, the murders of opposition leaders and human rights activists and persistent rumours that each of the two parties - the Government and the FPR - was preparing for war. The death of President Juvénal Habyarimana was the spark to the powder keg which set off the massacre of civilians. The next day, fighting resumed between the Government forces and the FPR. To date, that is until the moment of drafting this report, the acts of violence have not ceased. They are conspicuous both in their extent and in their characteristics.

1. The extent of the massacres

20. The Rwandese have indeed been the victims of a number of massacres in the past, notably in 1959, 1963, 1966, 1973, 1990, 1991, 1992 and 1993. However, those being perpetrated at present are unprecedented in the history of the country and even in that of the entire African continent. They have taken on an extent unequalled in space and in time.

21. The atrocities have extended over the entire national territory. A distinction must, however, be made between the governmental area and the area controlled by the FPR. In the first area, most of the massacres are carried out by the militias of the National Revolutionary Movement for Democracy and Development (MRND) - the interahamwe ("those who attack together") - and of

the Coalition for the Defence of the Republic (CDR) - impuzamugbmi ("those who have a single aim"), and are directed against the Tutsi in general and against Hutu who are considered moderate, i.e. against unarmed and defenceless people. Examples, supplied by trustworthy witnesses, are not lacking. A few may be mentioned: in Butare, several thousand persons have been massacred or mutilated; in Gisenyi, thousands of Tutsi have suffered the same fate, some of them having allegedly been buried alive in common graves in the town's cemetery; in the parish of Nyundo (prefecture of Kibuye), more than 560 persons have been killed including, 56 members of the clergy and nuns and 11 lay ministers; atrocities have also occurred in Kibuye itself, particularly in the stadium and the parish church; at Gikongo, a quarter of Kigali, on one day, Sunday 10 April, the street was covered with corpses for the length of a kilometre. At Kiziguro, a parish on the road between Kabiro and Murambi, a common grave was found containing several hundreds of corpses and a few survivors crying for help. In Cyangugu, the number of persons massacred to date is estimated at more than 25,000.

22. In the area controlled by the FPR, the cases of massacres reported are rather rare, indeed virtually non-existent, perhaps because little is known about them. The Government authorities accuse the FPR of having massacred several thousand civilians. According to a Rwandese "interim Government" statement made at Geneva on 24 May 1994, "FPR combatants have carried out systematic massacres of ethnic Hutu by making use in particular of their identity cards ... In the areas controlled by the FPR, thousands of people were savagely massacred and interred in common graves prepared well before the beginning of hostilities". There is no eyewitness evidence to confirm this information. At the request of the Special Rapporteur, senior officers of the Rwandese Armed Forces have promised to furnish documentary proof of those allegations. The FPR has been accused of removing persons from the displaced persons camps and executing them. This fact also, which might explain the absence of prisoners of war, has not been established or confirmed by other evidence. It should be noted that the FPR has promised to present prisoners of war to the human rights observers. What is certain, however, is that the FPR has been guilty of summary executions. For example, on 9 June 1994, FPR soldiers killed a number of members of the clergy, including two bishops and the Archbishop of Kigali. An operation carried out by the FPR on 16 June 1994 to evacuate Tutsi from the parish church of Saint Paul resulted in the deaths of several persons. According to the "interim Government", they were killed because they belonged to the Hutu ethnic group. The representatives of the FPR replied that some persons may well have been killed during the combat but that, in the heat of the action, there had been no time to sort out Hutu and Tutsi and any such acts were unintentional. The following day, an attack on a UNAMIR vehicle had killed one military observer and seriously wounded another. On 19 June 1994, despite three unfortunate precedents and the urgent appeal by the Special Rapporteur that humanitarian organizations should not be targeted, a shell had once again fallen in the compound of the ICRC hospital, killing one person and wounding several others.

23. The massacres had not begun on the same day throughout the territory of Rwanda. It was, of course, Kigali which started them on the night of 6 to 7 April with the massacre of Mrs. Agathe Uwilingiyimana, the Prime Minister, Joseph Kavaruganda, President of the Supreme Court, and several members of the Government, together with 10 Belgian members of UNAMIR. On the other hand,

Butare and Cyangugu remained calm for more than a week and were not caught up into the cycle of violence until their prefects had been dismissed and replaced by Hutu extremists. Concordant and reliable witnesses have stated that the new President of the Republic went to Butare to urge the Hutu population to engage in massacres. In Cyangugu, despite the delay, the number of persons massacred on 20 April reached, according to certain witnesses, some 15,000. It is alleged that the Armed Forces blocked all the roads leading to Zaire to prevent the survivors from escaping and the Prefect is alleged to have said that he had received "orders from above" to that effect. Those massacres are still continuing. Veritable manhunts have been carried out from house to house, from family to family, from village to village by members of the militias who, at the present time, are not hesitating to raid the so-called displaced persons' camps. Thus, on 14 June 1994, they carried off 40 young men and, on 17 June, had it not been for the firm intervention of UNAMIR, the "Mille Collines" Hotel would have witnessed a blood bath: a group of armed militiamen had already entered it.

24. In all, the number of persons killed throughout the territory is to be numbered in the hundreds of thousands, estimates ranging from 200,000 to 500,000. In fact, even the latter figure is probably less than the reality. Some observers think that the figure is close to a million. It is not sure that the exact number of victims will ever be known. What is absolutely certain, on the other hand, is that the international community is watching a human tragedy that appears to be well-orchestrated.

2. The nature of the massacres

25. The massacres are all the more horrible and terrifying in that they give the impression of being planned, systematic and atrocious.

26. The massacres do seem to have been planned. There are various pieces of evidence pointing to this conclusion. The first is the campaign of incitement to ethnic hatred and violence orchestrated by the media belonging to the Government, or close to it, such as Radio Rwanda, and above all Radio Télévision Libre des Mille Collines (RTLM). The second is the distribution of arms to the civilian population, and more particularly to members of the militias. Pastoral letters issued by the Bishop and priests of Nyundo diocese in December 1993 condemn this distribution of arms to the population. Furthermore, the members of the militias are reported to have undergone intensive training at military installations from November 1993 to March 1994. To this must be added the reign of terror carried out by the militias and the assassination of political figures. The third sign is the exceptional speed of events after the death of the President of Rwanda: the "provisional Government" was formed within only a few hours of the accident, according to a reliable international source. In addition, barricades were set up between 30 and 45 minutes after the crash of the aircraft, and even before the news of it had been announced on the national radio. A credible witness reports that, 45 minutes after the explosion, the road from the Hotel Méridien to Amahoro Stadium was blocked by soldiers and civilians and that he had been stopped twice by the latter. Senior officers of the General Staff whom the Special Rapporteur met acknowledge these facts, but assert that there was a justification for them: President Habyarimana was so popular that his murder by the FPR angered the people and elements in the armed forces. Finally, the

fourth indication is the existence of lists giving the names of persons to be executed. It seems to have been on the basis of these lists that various opposition leaders were murdered.

27. The massacres are systematic in nature. Whole families are exterminated - grandparents, parents and children. No one escapes, not even newborn babies. But what is even more symptomatic is that the victims are pursued to their very last refuge and killed there. This is true of ecclesiastical buildings, particularly churches, which once served as a refuge for the Tutsi, but have now become the scene of their holocaust. The same applies to hiding places in the roofs or other corners of houses and in the woods and forests, to which the attackers set fire to make sure that they leave no survivors behind them. The same applies also to the frontiers, which are blocked to prevent the Tutsi from escaping to neighbouring countries. At the third special session of the Commission on Human Rights, the representative of Médecins sans frontières gave a fairly typical example, which is worth quoting:

> "At 700 metres from the frontier with Burundi, 80 persons were seen running towards it ('like cattle') chased by a group of militiamen with machetes. One person was hacked to death in front of us. The others succeeded in reaching the frontier, but unfortunately a group of militiamen was awaiting them there. Less than 10 persons got across the frontier, the others having been hacked to death." (end of April 1994)

28. The killings are carried out under atrocious, appallingly cruel, conditions. They are preceded by acts of torture or other cruel, inhuman and degrading treatment. Generally, the victims are attacked with machetes, axes, cudgels, clubs, sticks or iron bars. The killers sometimes go so far as to cut off their fingers, hands, arms and legs one after another before cutting off their heads or splitting their skulls. Witnesses report that it is not uncommon for the victims to plead with their executioners or offer them money to let them be shot rather than hacked to death. It has also been reported that, when the Tutsi have shut themselves in a room or a church which the militiamen cannot get into, the military come to their aid, breaking down doors, throwing in grenades and leaving it to the militia to finish things off. This barbarism does not spare either children in orphanages or patients in hospital, who are taken away and killed or finished off. Mothers have been forced to beat their children, while Hutu staff working for Médecins sans frontières (Butare, end of April 1994) were obliged to kill their Tutsi colleagues. Those who had the courage to refuse were killed. It has even been reported that the killers, after executing their victims in the open street, in front of everyone, cut them up into pieces, and some do not hesitate to sit on the bodies and drink beer while waiting for prisoners to come and take the bodies away.

B. Other facts

29. The facts described below are the direct result of the war and the massacres combined. They concern those who were lucky enough to survive the killing and who are still struggling to stay alive. They are reflected in insecurity and exodus.

1. Insecurity

30. The whole of Rwandese territory is in a state of total insecurity, which has three closely linked aspects.

31. The first aspect, immediately perceptible, is the physical and moral dimension, which means, for the few who escaped the massacres, an instinctive effort to preserve their physical and moral integrity. They are, of course, in danger of running into one party to the conflict or another - the Rwandese Armed Forces (FAR), the militias or, alternatively, the FPR. Membership of the right ethnic group or political party can ward off the danger, as when Hutu encounter the FAR or militiamen, or Tutsi or Hutu moderates meet FPR soldiers, but that does not mean that they have escaped once and for all. Shell and mortar fire into the centre of a town does not distinguish between military camps and civilians' houses. Worse still, no precautions seem to be taken to prevent installations belonging to humanitarian organizations from being hit. A striking example is the shell which hit the ICRC Hospital on 19 July 1994, killing a member of the staff and wounding several others. The FPR, which was responsible for that action, justified it on the grounds that members of the FAR were sheltering behind the hospital in order to attack its troops - such an attitude cannot but demoralize the survivors. Other organizations, such as UNAMIR, have been deliberately targeted.

32. The second aspect is food insecurity. Famine is at the gates of Rwanda. Large parts of the territory seem to be entirely abandoned. Along the roads from Kigali to Byumba or to the Ugandan frontier at Kagitumba, for example, most of the villages are deserted, and the crops are not being harvested. There is a real threat of famine, particularly in the southern areas of the country, which have also been suffering from drought. The Special Rapporteur has received information that, in the displaced persons' camps in Rwanda, there have been cases of death from malnutrition, despite all the efforts being made by international organizations to provide humanitarian assistance.

33. The third aspect is health insecurity, or more precisely unhealthy conditions. Many observers have emphasized the danger of epidemics due to bodies rotting in the open air or thrown into rivers, which are liable to pollute the water. Many people, both displaced persons and others, are eking out a precarious existence which leaves them weak and thus more vulnerable to disease. It should not be forgotten, either, that Rwanda has one of the world's highest rates of infection with the AIDS virus. Efforts are being made to vaccinate people in displaced persons' camps, but the medical facilities in operation are not adequate to provide the necessary care. The Special Rapporteur visited the ICRC Hospital in Kigali, where he was most impressed by the selfless devotion of the medical staff, and also by the immense amount that has been achieved.

2. Exodus

34. The conflict in Rwanda has led to an exodus without precedent in this small country's history. This exodus is particularly striking in that it has a twofold aspect, the movement of displaced persons within the country being combined with the flight of refugees abroad.

35. The hostilities between the forces of the "provisional Government" and those of the FPR, and particularly the fear of massacres, have led to mass movements of population within the country. There are said to be over 2 million people who have left their home villages for other regions where they feel more secure. With the development of the conflict and the advance of the FPR, a large part of the population is constantly on the move, fleeing the fighting. The FPR's military advance to the south-west and the wave of displaced persons it will undoubtedly set in motion could make the situation throughout the region particularly explosive. It is estimated that up to 2 million people are trapped at this moment between the front line and the frontiers with Burundi and Zaire, both of which are at present closed to Rwandese refugees. Others find themselves in places from which they no longer dare budge, for fear of massacres. Although they are not being kept there by force, they are, in fact, hostages of the conflict. They are in various places, both in the capital and in other towns and regions of the country. During his stay, the Special Rapporteur was able to visit several centres for displaced persons, including the Amahoro Stadium, the King Fayçal Hospital and a camp set up at Kigali Airport. These centres, and others, are being protected by UNAMIR, and the various humanitarian organizations are making immense efforts to improve their situation, which nevertheless remains extremely precarious.

36. The hostilities, and above all the massacres, have caused many other Rwandese to leave their country and take refuge in neighbouring States. Thus, Zaire has taken in more than 50,000 refugees in the regions of South Kivu and Bukavu. A considerable number of them are nationals of Burundi, who had taken refuge in Rwanda during the violence in Burundi in October-November 1993. Burundi has received more than 85,000 refugees, who are in camps situated mainly in the Ngozi and Kirundo regions. But it is Tanzania that is giving shelter to the greatest number of refugees, estimated at 410,000, 330,000 of them in the Benaco camp alone, which is thus the world's biggest refugee camp. The total number of refugees is close to a million. This huge flow of refugees is also creating serious problems for the host countries, which are incurring risks, not just because of the overpopulation and insecurity resulting from the presence of the newcomers, but also because the political and ethnic tensions between Tutsi and Hutu are spilling over into their territories. The danger is considerable in Zaire, but even more so in Burundi, whose population is made up of the same ethnic groups. In addition, these countries are coming up to elections.

37. The refugees themselves are not able to escape from the insecurity caused precisely by the way the problems have been carried over into their camps. During his visits to a number of camps in the South Kivu region of Zaire, the Special Rapporteur was informed that several of them were being used as training bases for members of the militias. Cases of murder, torture and disappearance had also been reported. At Luvungi camp, near the Rwandese frontier, he had been able to note the tension that existed between Hutu and Tutsi refugees, when two international civil servants, one from Mali and the other from Senegal, had been verbally attacked and accused of being Tutsi spies. The Special Rapporteur has himself been interrogated several times concerning his nationality.

38. The situation is even more explosive and disturbing at Benaco camp in Tanzania. Between 28 and 29 April 1994, some 250,000 persons crossed the Rwandese frontier into the Ngara district of Tanzania. The great majority of them were Rwandese of Hutu ethnic origin fleeing the FPR's advance in eastern Rwanda. It was following this unprecedented inflow that UNHCR set up the Benaco camp, which at present holds over 330,000 persons, at a distance of some 17 km from the Rwandese frontier.

39. It has been found that the same structures of authority prevail in this camp as in Rwanda, and it is to be feared that the parties' militias are active there. It very quickly became evident to the camp administrators that among the persons sheltered there were some who were accused of having organized, or at least taken part, in the massacres in Rwanda, witnesses having recognized them. Fourteen of them, who were suspected of having taken part in the massacres and seemed to be in fear of their lives, agreed to be taken into protective detention by the Tanzanian police. On 15 June 1994, however, these 14 suspected persons were released by the Tanzanian police on condition that they did not return to Benaco. They had not kept their word, and an attempt by UNHCR to make them leave the camp resulted in a disturbance involving some 5,000 persons, who engaged in violent demonstrations and threatened the staff of the humanitarian organizations, saying that they would deal with them in the same way as the 10 Belgian United Nations peace-keepers, who had been tortured and mutilated before being killed in Kigali. It is reported that murders have been committed at Benaco, some of which seem to have been politically motivated.

40. Several observers encountered by the Special Rapporteur considered that the human tidal wave which preceded the establishment of Benaco - because of its planned and organized nature - looked like a strategic withdrawal on the part of members of the militias responsible for the massacres in Rwanda and their associates. Fears have accordingly been expressed that the camp may be used by the militias as a rear base for incursions into Rwandese territory, thus enabling them to continue to perpetrate violations of human rights.

II. VIOLATIONS OF HUMAN RIGHTS

41. The events described above undoubtedly constitute grave and massive violations of human rights. The question is to determine what is the nature of these violations, what are their causes and who are the culprits.

A. Nature

42. The charges are three fold: genocide through the massacre of the Tutsi, political assassinations of a number of Hutu and various violations of human rights.

1. Genocide of Tutsi

43. Eminent persons, including the Secretary-General of the United Nations, have not hesitated to describe the massacre of the Tutsi as genocide. It is necessary to confirm by reference to the facts that this term is appropriate.

44. Article II of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 states: "genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group."

45. It appears from this definition that the crime of genocide has three constituent elements, which might be summed up as follows:

(i) A criminal act

(ii) "With intent to destroy, in whole or in part"

(iii) A particular group "as such".

46. There does not seem to be any doubt about the first condition, in view of the massacres perpetrated (II (a)), and even of the cruel, inhuman and degrading treatment (II (b)). The second is not difficult to establish, either, since such a clear and unambiguous intention is contained in the constant incitements to murder put out by the media (particularly RTLM) and reproduced in leaflets. And even if that were not so, the intention could have been deduced from the facts themselves, on the basis of a variety of concordant indications: preparations for the massacres (distribution of firearms and training of members of the militias), number of Tutsi killed and the result of a policy of destruction of the Tutsi. The third condition, on the other hand, requiring that the ethnic group should be targeted as such, raises a problem, because the Tutsi are not the only victims of the massacres, in which Hutu moderates have not been spared. But the problem is more apparent than real, for two reasons: firstly, many witnesses confirm that the vetting carried out at roadblocks to check identities was aimed essentially at the Tutsi. Secondly, and above all, the main enemy, identified with the FPR, is still the Tutsi, who is the inyenzi (cockroach), to be crushed at all costs. The Hutu moderate is merely a supporter of the main enemy, and is targeted only as a traitor to his ethnic group, which he dares to oppose.

47. There is a document put out by the General Staff of the Rwandese army, dated 21 September 1992, which distinguishes between the main enemy and his supporters and which instructs the military hierarchy to give it a wide circulation. According to the terms of this document, the former "is the Tutsi within the country or abroad, an extremist nostalgic for power, who has never accepted and still does not accept the reality of the Social Revolution of 1959 and who wants to gain power in Rwanda by any means, including arms". The latter "is any person who gives any support to the main enemy". The

supporter can be a Rwandese or a foreigner. There are a number of documents in existence confirming this distinction and testifying to the fact that Hutu moderates are massacred only as associates or supporters of the Tutsi.

48. The conditions laid down by the 1948 Convention are thus met, and Rwanda, having acceded to it on 16 April 1976, is required to respect its principles, which would be binding upon it even without any treaty obligation, since they have acquired the force of customary law. In the Special Rapporteur's view, the term "genocide" should henceforth be used as regards the Tutsi. The situation is different in the case of the assassination of Hutu.

2. Assassination of Hutu

49. Members of the Hutu ethnic group, as already stated, have also been the victims of massacres. But at this stage a distinction has to be made. On the one hand, there are Hutu moderates, with whom, by extension, certain foreigners, such as Belgians, are assimilated and who comprise essentially the political opposition and human rights activists. They form a ready target for elements of the government armed forces and members of the militias. On the other hand, there are Hutu extremists, comprising essentially members of the militias, who are said to be liable to execution, simply on the basis of a denunciation, in areas controlled by the FPR.

50. These acts constitute murders, and more specifically political assassinations, violating the right to life, which is a fundamental right contained in many international instruments.

51. Though all these conventions could be cited, two only will suffice, the relevant provisions of which are binding on the Rwandese State, which has acceded to them. They are, first, the International Covenant on Civil and Political Rights of 16 December 1966 and, secondly, the African Charter on Human and Peoples' Rights of 28 June 1981. The political assassinations represent a flagrant violation of these instruments. It should be pointed out that the right to life is a fundamental right, which exists independently of any treaty obligation and which must be respected in all circumstances.

3. Other violations

52. A number of other and no less important rights have also been the subject of serious violations by the parties to the conflict. These violations relate both to human rights stricto sensu and to international humanitarian law.

53. In conjunction with the right to life, the other rights violated cover a fairly wide range. The following examples will suffice: the right to physical and moral integrity, whereby torture and other cruel, inhuman and degrading treatment are forbidden, a right established in many international legal instruments, particularly the International Covenant on Civil and Political Rights and the African Charter of Human and Peoples' Rights (it is worth noting that this right is also a fundamental one that must be observed in all circumstances); the principle of non-discrimination or right to equal treatment, freedom of movement or travel, two rights established in the

Conventions mentioned above; and refugee law, which is governed by the international instruments relating to the status of refugees, including the Convention of 28 July 1951, to which Rwanda is party.

54. International humanitarian law is not being respected either. Many of the acts alleged, such as murder, political assassination, execution of hostages and other inhuman acts committed against the civilian population or unarmed soldiers by the armed forces of the two parties to the conflict constitute war crimes in direct violation of the four Geneva Conventions of 12 August 1949, which have been ratified by Rwanda, and their common article 3. It may be noted at this stage that the FPR has told the ICRC that it considers itself bound by the Geneva Conventions and their Additional Protocols. Furthermore, the assassinations and other inhuman acts committed against the civilian population, like the acts of persecution for political motives combined with the war crimes, constitute crimes against humanity.

B. The causes

55. The causes of human rights violations in Rwanda are of various kinds: economic, social, political, cultural, and so on, three of which are immediately apparent and indicative of the present situation, namely, the rejection of alternate political power, incitement to hatred and violence, and impunity.

1. Rejection of alternate political power

56. The rejection of alternate political power, which typifies French-speaking black Africa in general, takes on a special form in Rwanda, where it has strong ethnic overtones. The reason for what is taking place in Rwanda is not ethnic as such, but rather political, the aim being the seizure of political power, or rather the retention of power, by the representatives of one ethnic group, previously the underdogs, who are using every means, principally the elimination of the opposing ethnic group, but also the elimination of political opponents within their own group. From this standpoint, the portrayal of the main enemy and their supporters, as mentioned above, is quite revealing. The resistance to the Arusha Peace Agreement of 4 August 1993 is indicative of this and even of the rejection of simple power sharing or political coexistence.

57. The rejection of alternate political power implies the absence of the rule of law, for the rule of law guarantees political alternation and both are basic requirements of multi-party democracy. In Rwanda, the rule of law has thus been replaced by the rule of violence and confrontation. The rules of democratic legality based on respect for the law have been swept aside. Political democracy is being replaced by the law of the gun, and the peaceful transfer of political power through the ballot box has given way to the seizure of power by force of arms, with its inevitable killings and barbarism.

2. Incitement to ethnic hatred and violence

58. False rumours and tracts designed to inflame ethnic hatred and encourage violence are constantly circulating in Rwanda. The Tutsi are portrayed, for example, as "bloodthirsty, power-hungry and determined to impose their rule on

the people of Rwanda by means of the gun". They are even said to be preparing to exterminate the Rwandese people. Repeated appeals are made to the Hutu proclaiming the "ten commandments", which advocate an ideology of apartheid to keep the Tutsi from returning to power. This is a long-standing campaign, as pointed out in various reports, including those of the International Commission of Inquiry on gross violations of human rights since 1 October 1990 (7-21 January 1993), comprising representatives of several non-governmental organizations, or the report submitted by Mr. Bacre Waly Ndiaye, Special Rapporteur on extrajudicial, summary or arbitrary executions, on his mission to Rwanda from 8 to 17 April 1993 (E/CN.4/1994/7/Add.1).

59. One new and significant development, however, is the deep involvement of Radio Rwanda, the national broadcasting station controlled by the President, and in particular of Radio-Télévision Libre des Mille Collines (RTLM). A striking fact is that the broadcasts of these stations in French differ significantly from those in Kinyarwanda, the only language spoken by virtually all Rwandese. While broadcasts in French are inoffensive, those in Kinyarwanda are highly aggressive in tone. RTLM does not hesitate to call for the extermination of the Tutsi and it is notorious for the decisive role that it appears to have played in the massacres. It is known as the "killer radio station", and justifiably so. According to Reporters sans frontières, at the end of April this propaganda organ of the Hutu extremists proclaimed that "by 5 May, the cleansing of the Tutsi must be completed" and that "the grave is still only half full, who will help us to fill it?". This campaign is, as a senior United Nations official has pointed out, made more dangerous by the fact that the generally illiterate Rwandese rural population listens very attentively to broadcasts in Kinyarwanda; they hold their radio sets in one hand and their machetes in the other, ready to go into action.

3. Impunity

60. Impunity, like incitement to hatred and murder, is a recurrent cause of the massacres. The political party militias put up road blocks, check the identity of those passing through, arrest Tutsi and moderate Hutu and execute them in the street, in front of everyone and watched by members of the gendarmerie and FAR. The armed forces, far from bothering the militias, actually help them. This is also true of some local authorities, prefects or mayors, who have been personally involved in the slaughter.

61. No legal steps have been taken against those responsible for the earlier and present massacres, although they are known to the public and the authorities. On the contrary, they continue to live quietly and move about freely, quite undisturbed and with complete impunity. Worse still, many local officials who particularly distinguished themselves by their acts of cruelty, have been promoted, whereas those who managed to keep the peace and prevent massacres were quite simply dismissed. A case in point is that of the Mayor Jean-Baptiste Gatete, notorious for his crimes, who was made Chief of Cabinet to the Minister for Family Affairs in June 1993. The second category includes the Prefect of Butare, who was killed, and the Prefect of Kibungo, who was dismissed. As has been noted, the slaughter in the two prefectures began immediately they were replaced.

C. The perpetrators

62. At the current stage of his investigation, the Special Rapporteur is not in a position to identify by name all those responsible for the violations and abuses committed. He does, in fact, have lists of the names of individuals involved in the planning and execution of the atrocities. However, it will take time for him to establish the chain of responsibility and draw up a list of the perpetrators as they are identified.

63. As far as the organs or authorities involved in the recent atrocities are concerned, however, some responsibility can be apportioned immediately to:

The Rwandese State authorities and, in particular, senior national political figures, such as a number of ministers; various components of the government security forces, such as the Presidential Guard, the Rwandese Armed Forces (FAR) and the gendarmerie; and some local authorities, prefects and mayors;

FPR organs, particularly those in charge of its military activities;

Private individuals such as members of the militias, leaders of extremist political parties (MRND and CDR) and the founders and broadcasters of RTLM;

Some light needs also to be shed on the responsibility of certain foreign States and their interference in Rwandese politics;

Finally, the role of the international community and, in particular, the response of the United Nations to the urgent needs of the population, especially with regard to security and humanitarian assistance, calls for examination. In this connection, the Special Rapporteur wishes to associate himself with those who have deplored the reduction of UNAMIR personnel on 21 April 1994, which has seriously restricted its ability to protect persons in danger.

64. It is against this background that the attack on the presidential aircraft must be examined by the Special Rapporteur, to determine any links between those who ordered it and those responsible for the massacres. The precise circumstances of the murder of moderate members of the "interim Government", including the Prime Minister, and of 10 Belgian soldiers, must also be ascertained. The links between the political party militias, particularly the interahamwe, the Presidential Guard, the Rwandese Armed Forces and the gendarmerie, must also be investigated in order to determine the chains of command and individual responsibility. On the basis of that investigation, the Special Rapporteur will be in a position to make appropriate recommendations to the Commission on Human Rights.

65. The Rwandese "interim Government" also bears a full measure of responsibility for having refused to take effective steps to prevent the violations of human rights and international humanitarian law, including genocide. From the outset of the atrocities, the Rwandese leaders maintained that the massacres would cease only with the end of the armed conflict.

During his meeting with the Chief of Staff of the FAR, the Special Rapporteur was told that the Rwandese authorities could appeal to the general population to stop the massacres and would be heeded, but that the conclusion of a cease-fire agreement was a prerequisite for any such appeal.

IV. RECOMMENDATIONS

66. The Special Rapporteur's recommendations, which take due account of the emergency situation obtaining in Rwanda, are divided into immediate measures and short-term and medium-term measures.

A. Immediate measures

I

67. The United Nations should:

Demand that the parties to the conflict put an immediate end to the war and to the genocide and other gross violations of human rights perpetrated in Rwanda. The cessation of hostilities should be unconditional and should cover both massacres and acts of war; and

To this end, it should appeal to the consciences and individual sense of responsibility of the leaders of the parties to the conflict.

II

68. The United Nations should invite the leaders of the parties to the conflict:

To make an urgent and solemn appeal to their troops, to militias and to armed civilians to halt the massacres forthwith under pain of severe and effective punishment; and

To take specific measures to disarm the militias and armed civilians. This disarmament should take place under the supervision of a neutral international force which could consist of UNAMIR II reinforced by contingents from members of the Organization of African Unity (OAU), whose rapid and complete deployment should be made possible; and

To disband the armed militias and similar organizations.

III

69. The United Nations should demand that the government authorities:

Also make a solemn and urgent appeal to those in charge of the media, particularly Radio-Télévision Libre des Mille Collines, to cease immediately the broadcasting of war propaganda; and

Take appropriate steps to prohibit any campaign or rumour likely to give rise to racial hatred and violence, under pain of severe punishment.

IV

70. The United Nations should solemnly:

Condemn the genocide perpetrated in Rwanda and stress the horrifying, abominable and unacceptable nature of such acts;

Inform the perpetrators that, once identified, they will have to answer for their acts and omissions to the competent authorities, in whatever part of the world they happen to be;

Request States which have granted asylum or other refuge to persons involved in the massacres to take the necessary steps to ensure that they do not escape justice.

V

71. The United Nations, in cooperation with OAU, should take the necessary steps to ensure the protection of orphans, displaced persons and refugees by:

Establishing a reception centre or orphanage to receive orphans, so as to shelter them from any danger and to provide them with decent living conditions and schooling. The centre would be financed by a special "solidarity" fund, financed by the Member States and managed by a board whose status and procedures will have to be determined;

Ensuring that the rights of refugees and displaced persons are respected, particularly with regard to their safety and living conditions, while reminding them that they, too, have obligations, particularly towards the host States, and that they must refrain from any act likely to contravene national or international law;

Strengthening the resources of the Office of the High Commissioner for Refugees to enable it to undertake studies to determine the conditions for the return of refugees and displaced persons to their country or villages; and

Establishing without delay crossing areas which will enable the people of Rwanda to place themselves under the protection of the authorities of their choice.

B. Short-term and medium-term measures

I

72. The United Nations, in cooperation with OAU, should take appropriate steps to:

Induce the parties to the conflict to negotiate, in good faith and with due regard to the Arusha Agreement of 4 August 1993, the terms for peace, democratic transition and national reconciliation and unity; and

Call on the parties to implement in good faith the agreements thus reached. The agreements must not in any way provide, as part of a political settlement, for the impunity of those responsible for acts of genocide and other crimes against humanity. On the contrary, they must establish mechanisms for the effective punishment of those responsible. That is one of the prerequisites for national reconciliation and unity.

II

73. The United Nations should ensure that the transition to democracy leads to free and fair elections on the basis of a constitution establishing national democratic institutions which take due account of the legitimate interests of the two communities concerned, with a view to genuine national integration.

III

74. The United Nations should, within the framework of the peace negotiations:

Stress the need for national reconciliation and unity. In this regard, the new constitution should contain provisions for the prohibition and severe punishment of acts of incitement to ethnic hatred and violence. No official document, national identity card, driving licence, family registration book or the like should contain any reference to membership of an ethnic group. Any ethnically based party or association should be prohibited; and

Take measures to establish, or help to establish, a radio station broadcasting in both French and Kinyarwanda, to be responsible for providing education in human rights and in the scrupulous respect for human dignity. The funding and management arrangements would be the same as those for the orphanage referred to earlier.

IV

75. Pending the establishment of a permanent international criminal court, the United Nations should establish an ad hoc international tribunal to hear the evidence and judge the guilty parties or, alternatively, should extend the jurisdiction of the international tribunal on war crimes committed in the former Yugoslavia.

V

76. The United Nations should establish in Rwanda a reinforced team of human rights observers under a high-level coordinator responsible to the Special Rapporteur.

ANNEX II

Report on the situation of human rights in Rwanda prepared by the Special Rapporteur of the Commission on Human Rights in accordance with Commission resolution S-3/1 and Economic and Social Council decision 1994/223

Introduction

1. In accordance with the mandate entrusted to him by the Commission on Human Rights in its resolution S-3/1 of 25 May 1994, the Special Rapporteur made a second visit to Rwanda from 29 to 31 July 1994. The purpose of this visit was to assess the situation of human rights in Rwanda since the finalization of the preliminary report which the Special Rapporteur had submitted to States members of the Commission on Human Rights on 28 June 1994 (E/CN.4/1995/7) and to establish contact with the new Rwandese authorities in order to discuss with them problems relating to human rights and, in particular, the situation of the refugees and displaced persons.

2. The Special Rapporteur was able to hold talks on 28 and 29 July 1994 in Nairobi, and from 29 to 31 July in Kigali and Gitarama, with representatives of the new Rwandese Government, senior officials of various United Nations agencies working in Rwanda and representatives of non-governmental organizations. The persons he met included: Mr. Paul Kagame, Vice-President of the Republic and Minister of Defence; Mr. Faustin Twagiramungu, Prime Minister; Mr. Alphonse-Marie Nkubito, Garde des Sceaux, Minister of Justice; Mr. Jean-Marie Vianney Ndagijimana, Minister for Foreign Affairs; Mr. Joseph Nsengumana, Minister of Higher Education and Scientific Research; Mr. Mugbo Rie, Minister of Labour and Social Affairs; Mr. Shahryar Khan, Special Representative of the Secretary-General for Rwanda; General Roméo Dallaire, Force Commander of the United Nations Assistance Mission to Rwanda (UNAMIR); Mr. Michel Moussalli, Special Envoy of the United Nations High Commissioner for Refugees (UNHCR); Mr. Arturo Hein, Humanitarian Coordinator of the United Nations Rwanda Emergency Office (UNREO), and his Executive Director; Mr. Bernard Kouchner; and the Liaison Committee of Human Rights Leagues and Associations in Rwanda (CLADHO).

3. The Special Rapporteur wishes to express his thanks to all these persons who assisted him and thus facilitated his visit, in particular to the Force Commander of UNAMIR for his logistic support.

4. As a result of the various talks held, it was possible to assess the situation prevailing in Rwanda, stress being laid on the insecurity and the return of refugees and displaced persons, and to reach agreement with the authorities on certain points.

I. THE INSECURITY IN RWANDA

5. The fundamental problem raised by the current situation in Rwanda is that of security. The end of the armed conflict has not put an end to insecurity. The hostilities have left in their train nothing but ruin and desolation: great loss of human life, considerable damage to property, bereaved families, towns emptied of their inhabitants, etc.

6. Admittedly, since the fall of Gisenyi on 15 July 1994 and the cease-fire, life is gradually beginning to reappear. In Kigali and Gitarama shops are being cleaned or are already open, small markets are opening here and there, and the large market in Kigali reopened on 27 July. The Special Representative of the Secretary-General for Rwanda remains fairly optimistic, taking the view that "a great change will occur" in two or three months' time, meaning that life will return to normal. But the chief concern of insecurity remains. It is characterized by three essential features; the illegal occupation of abandoned houses; banditry and summary executions; and the virtual non-existence of administration by the State.

A. The illegal occupation of abandoned houses

7. People are illegally occupying houses abandoned by their fleeing owners or tenants. The most difficult case seems to be that of former refugees, particularly those who fled the country after the massacres of recent years. On returning to Rwanda, they claim their land and settle in the houses of displaced persons or other refugees. The Government is thus confronted with an awkward dispute, which is all the more serious since public buildings are in some cases also occupied illegally. The Public Prosecutor's Office in Kigali has thus been converted into a restaurant, with placards stating that fact, and legal files have been converted into charcoal for fires to make porridge and tea.

8. Admittedly, the Government has set up an inter-ministerial committee, headed by the Ministers of the Defence and the Interior, with the aim of restoring the rights of owners, considering that they have priority over the former refugees. However, the problem will be only partly resolved, not to say moved elsewhere, since it is necessary to find houses to accommodate the new arrivals and land available for building or the growing of crops. The difficulty here lies in the fact that Rwanda is only 26,338 square kilometres in area for a population estimated at roughly 8 million before the hostilities; in other words, it has a very high density of 350 inhabitants per square kilometre. The question arises whether the heavy losses caused by the massacres, and then the epidemics will be offset by the return of the former refugees. The difficulty can be grasped more clearly if one remembers that the overpopulation of Rwanda is one of the underlying causes of the armed conflict. In addition to this difficulty, there is the problem of banditry and summary executions.

B. Banditry and summary executions

9. In the towns in Rwanda banditry and robbery are rampant. Armed gangs ransack houses and huts. There are also reports of disappearances and abductions, as well as summary executions. The latter acts are, according to persistent rumour, the work of the Rwandese Patriotic Front (FPR). The members of the Government, who implicitly acknowledge the facts, do not attribute responsibility to the FPR. They do not, however, deny the fact that rogue elements of the FPR or the army may engage in such acts as reprisals. But responsibility for the disappearances and summary executions may also be attributed to victims' relatives taking vengeance on the murderers or members of their families. Mention is also made of members of militias in Kigali and certain other parts of Rwanda. They are reportedly threatening to continue their summary executions and have already killed a soldier and thrown him into a sewer. The new Government has apparently undertaken "immediate action against the troublemakers" to ensure the security of persons and property. But this initiative is jeopardized by the non-existence of a genuine administrative structure.

C. The virtual non-existence of administration by the State

10. The virtual non-existence of administration by the State constitutes the third element which, in fact, possibly accounts for the other two. The former political, judicial and administrative authorities, dominated by the Hutu ethnic group, fled the country at the same time as the members of the armed forces as the FPR army advanced. Many officials of the central and local administration, particularly prefects and mayors, thus deserted the country, as did magistrates and, above all, members of the security forces, the police force and the army. The media thus reported, on Tuesday, 2 August 1994, the presence in Goma of some 20,000 government troops. This could be a considerable underestimatation.

11. The FPR, which has won a military victory, has only an embryonic administration, a war administration, which at the present time is fulfilling a transitional role; in fact, everything remains to be done. The country needs to be rebuilt virtually from nothing. The critical situation of insecurity in Rwanda is not reassuring for those who live there, and even less for the refugees whose return is earnestly desired by the international community.

II. THE RETURN OF THE REFUGEES AND DISPLACED PERSONS

12. The chief concern of the international community at the present time is the return of the refugees and displaced persons to Rwanda. These people are living in precarious conditions but are loath to return out of fear of reprisals by the new authorities - notwithstanding the measures taken to reassure them.

A. The distressing living conditions

13. The Rwandese refugees have been and still are living in distressing and tragic conditions as a result of their exodus and exile.

1. The exodus

14. Fleeing the victorious advance of FPR elements, millions of people burst across the borders of neighbouring States in search of refuge, particularly in Zaire. The number of these refugees is simply huge. One international weekly reported on 28 July 1994 that 12,000 refugees an hour were arriving in Goma. Other sources within United Nations agencies put the figure at 20,000 an hour. In addition to civilians, there were several thousand government soldiers, mingling with or following the throng.

15. This human tidal wave brought with it not only hunger, thirst and exhaustion due to the long walk and the weight of baggage, but also numerous accidental deaths (trampling underfoot, suffocation, etc.) and murders. Moreover, the arrival of the survivors brought no relief from their suffering, as their living conditions were equally distressing.

2. The refugees in exile

16. The exodus of Hutu served to deplete the population of Rwanda still further. At the end of July, the number of refugees created by the war and the massacres was estimated at approximately 2.5 million. The refugee population is distributed as follows: 1.2 million at Goma, 500,000 in Sud-Kivu, 300,000 to 400,000 in the United Republic of Tanzania, 150,000 in Burundi, and 10,000 to 12,000 in Uganda. Goma, which is the base for "Operation Turquoise", has thus become the leading refugee centre, ahead of the Bénaco camp in Tanzania. A tragic situation arose from the fact that Goma, which previously had only 300,000 inhabitants, experienced a sudden influx of an additional 1.2 million persons, thus quadrupling its population. The overpopulation of this Zairian city, in precarious living conditions, contained the seeds of a human tragedy which made it a case on its own. The consequences were predictable. Famine was followed by a cholera epidemic, which killed several thousand persons. The figures given are imprecise and in dispute, varying from one source to another, but the number of deaths is estimated at between 20,000 and 50,000. The cholera epidemic was compounded by a recent outbreak of dysentery, which might perhaps be of epidemic proportions. Journalists have added to the list of Rwanda's ills the threat of a volcanic eruption (involving two volcanoes, the Nyiragongo and the Nyamuragira, situated a few dozen kilometres north of Goma, as reported in the international press of 24-25 July 1994).

17. Despite these sufferings, the refugees are hesitant to return to their country because they fear for their lives.

B. The fear of reprisals

18. The Hutu refugees in the various neighbouring States, and more particularly those at Goma, want to return home, but are afraid that the new, predominantly Tutsi political authorities may take vengeance and massacre them. They are thus caught in a difficult dilemma, the only available option being either to die of disease (cholera, dysentery, etc.) or to risk reprisals. Their fears, which originated in the genocide against the Tutsi, are nurtured and indeed exacerbated by Radio Télévision Libre des Mille Collines (RTLM) and by the former Government in exile.

1. The activities of the RTLM

19. The RTLM has continued its campaign of incitement to ethnic hatred and violence. It reportedly called on the Hutu to leave Rwanda and take refuge outside the country, particularly in Zaire, for fear of being massacred by the new authorities. The appeal itself is said to have been accompanied by barely concealed reprisals against recalcitrants. In this connection, the Special Rapporteur has been informed of one of the sayings going round in Goma: "The wolves sleep with the sheep". And the wolves tell the sheep "Don't go back, stay with us", implying that, should the sheep refuse, they would suffer the inevitable penalty of being eaten by the wolves.

20. The pressure exerted by the RTLM is made all the stronger and more effective by the fact that it is well known as the radio of the Rwandese and that the Rwandese have a "radio culture", with their radios turned on practically all the time. At one point public opinion was pleased to learn that "the radio that kills" had stopped broadcasting, and it was even reported that French troops had neutralized it. However, this proved to be untrue, since as soon as Monday, 1 August 1994, the international press was again deploring its existence and the campaign orchestrated by it.

2. The activities of the former Government

21. The campaign conducted by the RTLM backs up the activities of the former Rwandese authorities. Concordant and reliable testimony reveals that those authorities called upon the Hutu population to follow them into exile, raising fears that it would be massacred by the RPF and the Tutsi. This appeal reportedly formed the subject of a full-fledged campaign by the media, prefects, army and gendarmerie officers and mayors. It appears to have been seen much more as an order than as a mere recommendation, with those to whom the message was addressed not having a choice. Large numbers of Hutu

were forced to follow, thus becoming what can only be described as hostages, while those who refused were considered as collaborators with the Tutsi and were massacred as a result. In this connection, there are reports that a number of people, including a teacher, testified that they had gone to Goma against their will "in order not to risk their lives". All the signs are that this mass exodus of people to the States bordering Rwanda, and more especially Zaire (Goma), was not spontaneous and disorderly but forced and planned. The Hutu are afraid both of the massacres allegedly perpetrated by the new Tutsi authorities and of those actually committed by the former Hutu authorities. This situation has led the FPR, under pressure from the international community, to take measures to reassure the refugees and displaced persons.

C. Measures to reassure the refugees and displaced persons

22. Various measures have been taken by the new Government and the international community to encourage the refugees and displaced persons to return home.

1. The new Rwandese Government

23. The new Rwandese Government has basically done two things to encourage Rwandese to return to the country.

24. The first is the statements made by the highest authorities of the State. The President of the Republic, the Vice-President and the Prime Minister have all called upon the refugees to return, assuring them that they have nothing to fear either for their person or for their property. They have been told that they will recover what they left behind and that their rights will be given priority over those of earlier refugees. Such a commitment - admittedly given at the domestic level, but under the gaze of the international community - is not without genuine significance. However, some observers fear that the refugees do not have access to the information broadcast over Rwandese radio because the broadcasting range is limited to the Kigali region. Members of the Government have, however, said that this objection is only relative, and applies only to FM radio broadcasts. The important question here is whether the refugees listen or have the time to listen to Rwandese radio. Moreover, even supposing they do, might they not consider the Government's pledge as mere political rhetoric or even a trap, bearing in mind the whole campaign orchestrated by the former Rwandese authorities? Consequently, statements must be followed up as soon as possible by specific implementation measures in order to win over sceptical refugees.

25. The second Government act was the agreements concluded by the President of the Republic at the end of July 1994 with his four counterparts in the neighbouring States of Zaire, Tanzania, Burundi and Uganda. In these international instruments, the States concerned basically agree on four points:

(a) The return of the refugees to Rwanda in complete freedom;

(b) The non-use of the territories of the States of refuge as a base for destabilizing Rwanda;

(c) The disarming of military personnel and other armed persons;

(d) The immediate closing down of mobile radios, where they exist, that incite people to ethnic hatred.

26. Were they to be applied, these agreements would serve to encourage the return of the Hutu refugees to Rwanda. However, these measures are not enough in themselves and must be complemented by action on the part of the international community.

2. The international community

27. The term "international community" must be interpreted lato sensu as encompassing not only United Nations bodies but also member States and the various non-governmental organizations helping to safeguard human lives in the field.

28. The international community, in this broad meaning, has taken a whole series of measures designed to promote the return of the refugees and displaced persons in full security. Without listing them all, a few of the more recent ones may be mentioned by way of illustration:

(a) the establishment of humanitarian staging posts along the routes taken by returning refugees is contemplated by UNHCR and UNAMIR. These "humanitarian routes" would, in particular, link Goma and Bukavu to Kigali and there would be water, food and medicine supply posts at regular intervals;

(b) Technical and logistic support and delivery of provisions is envisaged, not in the refugee camps or on the "humanitarian routes", but directly in Rwanda. This is the strategy adopted by the United States of America to attract the refugees and thus promote their return to Rwanda. A start has already been made in implementing this policy, with the disembarkation of United States troops and equipment on Sunday, 31 July 1994;

(c) The creation of radio stations broadcasting information to the refugees. Such information would relate to their security and would offset the alarmist rumours spread by Hutu extremists. Two radio stations have already been set up for this purpose. The first, run by the Swiss section of Reporters without Borders under the direction of the journalist Philippe Dahinden, has in principle begun broadcasting from Bukavu in Zaire, while the second, also run by Reporters without Borders, should broadcast from Goma. However, these measures are still not enough, and the Special Rapporteur has therefore put forward a number of proposals that have received the agreement of the Government.

III. PROPOSALS AND RECOMMENDATIONS

29. In his discussions with members of the Government, the Special Rapporteur made a number of suggestions or proposals which were favourably received. These proposals, some of which, it is true, already seemed to have been adopted, are designed essentially to encourage the return of the refugees and social peace in Rwanda. They relate to non-recourse to reprisals, additional measures of reassurance and deployment of United Nations human rights experts in the field.

A. Non-recourse to reprisals

30. The main aim of the Special Rapporteur's approach to the new authorities in Kigali was to make sure that they would not engage in summary executions. The Special Rapporteur was satisfied by the reply that he received from the various personalities he met, a reply which was in fact completely unambiguous. It may be summarized as follows: the new Government pledges not only to refrain from taking measures or acts of reprisal but also to punish any persons engaging in such acts. The Prime Minister stated: "I undertake not to permit any summary executions, and any persons guilty of such executions will be punished ... Impunity cannot be tolerated in this country."

31. Impunity being one of the sources of serious human rights violations, including genocide, in Rwanda, the Government asserts its firm determination to eliminate it. To this end, a rapid reorganization of the judicial machinery is being undertaken by the Minister of Justice. It was also asserted no less firmly that non-recourse to reprisals and the prosecution of those guilty of genocide, a question which is inextricably linked with it, are essential conditions for the national reconciliation and unity that are vitally necessary. The Special Rapporteur took note with satisfaction of these views, which coincide with those he expressed in his preliminary report.

32. Non-recourse to reprisals, as referred to in the aforementioned statements by the three leading political figures of the State and which does not exclude prosecution of persons guilty of genocide, has a twofold objective. Firstly, in the immediate future, the aim is to reassure refugees that they can return to their land and homes in complete peace of mind and security. The second goal, over the longer term, is to prevent individuals from taking the law into their own hands and thus bring lasting social peace back to Rwanda.

33. In the immediate future, however, this position, praiseworthy and commendable though it is, is nevertheless limited. The Special Rapporteur therefore proposed additional measures.

B. Additional measures of reassurance

34. The Special Rapporteur suggested that the political authorities should take a number of specific measures, in addition to those already adopted, in order to further reassure the refugees. Those suggestions concern both immediate and short-term measures.

1. Immediate measures

35. Immediate measures include:

(a) An information campaign aimed at the population within Rwanda, deploring and condemning the massacres, extending sympathy to victims and bereaved families, assuring them that the guilty will be tried and punished by the courts and urging them to refrain from taking the law into their own hands, on pain of severe penalties;

(b) Circulars, service notes and instructions addressed to all national or local authorities, calling on them not to tolerate any act of reprisal and to institute proceedings against any persons guilty of such acts;

(c) Regulations prohibiting and laying down heavy penalties for acts of incitement to ethnic hatred or violence. In this connection, the Special Rapporteur welcomed the fact that, according to members of the Government, the new identity cards no longer contain a reference to ethnic origin.

2. Short-term measures

36. The short-term measures recommended by the Special Rapporteur have to do mainly with education regarding human rights and strict respect for human dignity. This education would be provided both by schools and by radio broadcasts. It would be a matter simply of incorporating it into curricula and programmes. The short-term impact of such action can be gauged in terms of Rwanda's "radio culture" and its medium-term impact in terms of the school's role in educating future generations.

37. Long-term measures should be taken as soon as possible and supplemented by the deployment of United Nations human rights experts in the field.

C. Deployment of United Nations human rights experts

38. The Special Rapporteur finally secured the Rwandese authorities' acceptance of the idea of deploying United Nations human rights experts throughout the country. He emphasized the role of such experts and the plan of action for them.

1. The role of United Nations human rights experts

39. The presence of experts in the field presents definite advantages by virtue of the various roles which they can play: persuasion, deterrence, prevention and defence.

40. The first involves restoring the confidence of the refugees and displaced persons so that they can return with complete peace of mind; the presence of such experts is in itself reassuring in that it can provide them with a guarantee against further massacres. It is also a deterrent in that the new authorities will beware of carrying out reprisals in the presence of United Nations experts who, in addition, will ascertain the good faith of the authorities and their sincerity in not carrying out reprisals.

41. Deterrence leads to prevention i. that it prevents further violations of human rights by virtue of the presence of United Nations experts who will monitor the return of the refugees, making sure of their safety and helping them to settle in again, with their rights being strictly observed. Finally, defence will purely and simply involve assisting with inquiries in the field in order to determine the facts regarding the various violations of human rights by the parties to the conflict and the perpetrators of massacres and genocide.

2. Plan of action

42. The action envisaged by the Special Rapporteur comprises three stages. Firstly, to take account of the limited resources of the Centre for Human Rights and the urgency of the matter, the number of United Nations experts would be restricted to 20 assigned as follows:

(a) Ten to monitor the refugees over the entire length of the "humanitarian routes" referred to above;

(b) Ten others, one in each of the following 10 major population centres: Kigali; Butare (136 km from Kigali); Byumba (75 km); Gitarama (53 km); Kibungo (108 km); Kibuye (139 km); Gisenyi (175 km); Gikongoro (165 km); Ruhengeri (116 km); Cyangugu (291 km). As the refugees and displaced persons reach their homes, the experts deployed along the "humanitarian routes" could reinforce those assigned to the above-mentioned locations.

43. In a second phase, as soon as resources allow, the United Nations should deploy between 150 and 200 experts throughout Rwanda for a period of not less than six months, in order to monitor not only the return, but also the reconstruction of Rwanda, and to conduct the necessary inquiries to ascertain the facts regarding the massacres. In this way, the plan will come into full operation during the difficult initial period of national reconstruction when human rights and fundamental freedoms could be open to serious violations.

44. Thirdly, at the end of the period of national reconstruction, the United Nations should begin to gradually withdraw its experts in the field, leaving only about 50 of them to conclude the inquiry by the end of the Special Rapporteur's mandate.

45. Collectively, these measures, if implemented, should overcome the reluctance of refugees and displaced persons, enable them to return en masse and guarantee their safety. At present, the United Nations escort operations have been interrupted in order to avoid importing the cholera epidemic into Rwanda. It is to be hoped that the epidemics will soon be halted and that the Rwandese refugees will be able to return to their lands and their homes without difficulty.

46. International assistance with the reconciliation and reconstruction efforts in Rwanda is vital. Accordingly, the Special Rapporteur associates himself with the urgent appeal made by the United Nations High Commissioner for Human Rights on 2 August 1994 to the international community for voluntary contributions to support the early deployment of human rights experts in the field, with the necessary logistical backup.

47. Inquiries are currently being conducted in south-western Rwanda by the team of human rights experts established by the High Commissioner for Human Rights. They will shortly be the subject of a report.